

## § 21.953

## 47 CFR Ch. I (10–1–99 Edition)

### § 21.953 Prohibition of collusion.

(a) Except as provided in paragraphs (b), (c) and (d) of this section, after the filing of short-form applications, all applicants in an MDS auction are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements, with other applicants until after the winning bidder makes the required down payment, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the applicant's short-form application. Communications among applicants concerning matters unrelated to the MDS auction will be permitted after the filing of short-form applications.

(b) Applicants may modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided such changes do not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for the same BTA service area.

(c) After the filing of short-form applications, applicants may make agreements to bid jointly for BTA service areas, provided the parties to the agreement have not applied for the same service areas.

(d) After the filing of short-form applications, a holder of a non-controlling attributable interest in an entity submitting a short-form application may, under the circumstances specified in § 1.2105(c)(4), acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with, other applicants for the same BTA service areas. See 47 CFR 1.2105(c)(4).

(e) To reflect the changes in ownership or in the membership of consortia or joint bidding arrangements specified in paragraphs (b), (c) and (d) of this section, applicants must amend their short-form applications by submitting a revised short-form application, filed within two business days of any such change; such modifications will not be considered major amendments of the applications within the meaning of

§ 21.952(c)(2). However, any amendment which results in the change of control of an applicant will be considered a major amendment of the short-form.

(f) For purposes of this section, the terms "applicant" and "bids or bidding strategies" are defined as set forth in 47 CFR 1.2105(c)(5).

[60 FR 36558, July 17, 1995]

### § 21.954 Submission of up front payments.

(a) The Commission will require applicants to submit an upfront payment prior to the MDS auction. The amount of the upfront payment for each BTA service area being auctioned and the procedures for submitting it will be set forth in a public notice. Upfront payments may be made by wire transfer or by cashier's check drawn in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission. No interest will be paid on upfront payments.

(b) For MDS auctions, the Commission will require each applicant to submit an upfront payment equal to the largest combination of activity units (as defined in the Commission's activity rules established pursuant to § 21.951(a)(2)(vi)) associated with the BTAs on which the applicant anticipates being active in any single round or bidding. Applicants who are small businesses eligible for reduced upfront payments will be required to submit an upfront payment amount in accordance with § 21.960(c). If an upfront payment is not in compliance with the Commission's rules, or if insufficient funds are tendered to constitute a valid upfront payment, the applicant shall have a limited opportunity to correct its submission to bring it up to the minimum valid upfront payment prior to the auction. An applicant who fails to submit a sufficient upfront payment to qualify it to bid on any BTA service area being auctioned will be ineligible to bid, its application will be dismissed, and any upfront payment it has made will be returned.

(c) The upfront payment(s) of a bidder will be credited toward any down payment required for the BTA service

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areas on which the bidder is the winning bidder. Where the upfront payment amount exceeds the required down payment of a winning bidder, the Commission may refund the excess amount after determining that no bid withdrawal payments are owned by that bidder. In the event a payment is assessed pursuant to § 21.959(a) for bid withdrawal or default, upfront payments or down payments on deposit with the Commission will be used to satisfy the bid withdrawal or default payment before being applied toward any additional payment obligations that the winning bidder may have.

[60 FR 36559, July 17, 1995]

### § 21.955 Submission of down payments.

(a) After bidding has ended on all BTA service areas, the Commission will identify and notify the winning bidders and declare the bidding closed in the MDS auction. Within five (5) business days after being notified that it is a winning bidder on a particular BTA service area(s), a winning bidder must submit to the Commission's lockbox bank such additional funds as are necessary to bring its total deposits (upfront payment plus down payment) up to twenty (20) percent of its winning bid(s). This down payment may be made by wire transfer or by cashier's check in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission.

(b) Winning bidders who are small businesses eligible for installment payments under § 21.960(b) are only required to bring their total deposits up to ten (10) percent of their winning bids. Such small businesses must pay the remainder of the twenty (20) percent down payment within five (5) business days following release of the public notice stating that their BTA authorizations are ready to be issued.

(c) Down payments will be held by the Commission until the winning bidder has been issued its BTA authorization and has paid the remaining balance of its winning bid, in which case it will not be returned, or until the winning bidder is found unqualified to be a station licensee or has defaulted, in

which case it will be returned, less applicable default payments. No interest will be paid on any down payment.

[60 FR 36559, July 17, 1995]

### § 21.956 Filing of long-form applications or statements of intention.

(a)(1) Within 30 business days of being notified of its status as a winning bidder, each winning bidder for a BTA service area will be required to submit either:

(i) An initial long-form application for an MDS station license, along with any required exhibits; or

(ii) A statement of intention with regard to the BTA service area, along with any required exhibits, showing the encumbered nature of the BTA, identifying all previously authorized or proposed MDS and ITFS facilities, and describing in detail the winning bidder's plan for obtaining the previously authorized and/or proposed MDS stations within the BTA.

(2) A winning bidder that fails to submit either the initial long-form application or statement of intention as required under this section, and fails to establish good cause for any late-filed application or statement, shall be deemed to have defaulted and will be subject to the payments set forth in § 21.959(a).

(b) Each initial long-form application for an MDS station license within an auction winner's BTA service area, and each statement of intention with regard to an auction winner's BTA service area, must also include the following:

(1) FCC Form 430;

(2) An exhibit detailing the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement the winning bidder had entered into relating to the competitive bidding process prior to the time bidding was completed (*see* 47 CFR 1.207(d));

(3) An exhibit complying with 47 CFR 1.2110(i) and 21.960(e), if the winning bidder submitting the long-form application or statement of intention claims status as a designated entity.

(c) Subsequent long-form applications for additional MDS station licenses within the BTA service areas of winning bidders may be submitted at